

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RAFAEL FOX, PAUL D'AURIA and JILL
SHWINER,

Plaintiffs,

-against-

STARBUCKS CORPORATION d/b/a
STARBUCKS COFFEE COMPANY,

Defendant.

Case No. 19-CV-4650 (AJN)

**DECLARATION OF RAMI KRANZ IN
SUPPORT OF DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

RAMI KRANZ, does hereby swear, affirm and attest under the penalties of perjury as follows:

1. I am the Regional Retail Quality Assurance Manager at Starbucks Corp. ("Starbucks"), Defendant in the above-captioned case. I submit this declaration in support of Defendant's Motion for Summary Judgment seeking to dismiss the Complaint of Plaintiffs Rafael Fox ("Fox"), Paul D'Auria ("D'Auria") and Jill Shwiner ("Shwiner") (collectively, "Plaintiffs"). The facts and circumstances set forth herein are based on my personal knowledge or on the books and records of Starbucks.

AVP Termite & Pest Control of New York, Inc.

2. D'Auria and Shwiner were employees of AVP Termite & Pest Control of New York, Inc. ("AVP"), a vendor that Starbucks hired to provide pest control services to certain of its Manhattan stores during the relevant period.

3. In 2012, AVP submitted a proposal to Starbucks for its pest control services (the "2012 Proposal"). A copy of the 2012 Proposal is attached as Exhibit 1.

Starbucks Retains AVP In Part to Remove Pest Strips/Other Unapproved Pest Control Devices

4. Starbucks accepted AVP's 2012 Proposal and retained AVP as a pest control specialist to service Starbucks stores.

5. The scope of the work that D'Auria and Shwiner performed for Starbucks included inspecting Starbucks locations, solving pest control issues at Starbucks locations, addressing and alerting management to any problems that existed, as well as correcting these problems, all to ensure that the Starbucks locations AVP serviced were free of pests.

6. On August 10, 2016, Shwiner e-mailed Margaret Kis, Starbucks Manager of Facilities Services, copying D'Auria, and reported that she "added on our work orders that the 'removal of equipment will result in additional charges,' to help deter the stores. Same with those no Pest strips, bug bombs, or bug spray." A copy of the August 10, 2016 e-mail is attached as Exhibit 2.

7. To confirm that AVP technicians were removing any unapproved pest strips that they found, on September 29, 2017, Margaret Kis wrote to Shwiner, "IF PAUL (referring to D'Auria) FINDS THEM, (referring to pest strips), TOSS THEM OUT", to which Shwiner replied, "he has been". A copy of the September 29, 2017 e-mail is attached as Exhibit 3.

Starbucks Retains Ecolab as a Pest Control Vendor

8. Ecolab, a different pest control service provider, was retained by Starbucks to service its Manhattan Starbucks locations.

9. During the time that Ecolab worked for Starbucks, Ecolab located and removed pest strips as part of its assignment with Starbucks. A copy of a October 26, 2016 e-mail between Ron Shuler and Kimberly Healy confirming that Ecolab is supposed to be locating and removing all pest strips is attached as Exhibit 4.

Starbucks' Policies Related to Pest Control

10. Starbucks' Food Safety Manual, which is distributed to all store employees, prohibits all Starbucks partners from using any pesticides, and requires that any pesticides or insecticides be applied only by Starbucks' expert pest control vendors. A copy of the relevant pages from the Starbucks food safety manual re attached as Exhibit 5.

11. Starbucks C.A.F.E. Practices Verifier and Inspector Operations Manual, a publicly available document, forbids Starbucks vendors and suppliers from using any pesticides prohibited by the World Health Organization Type 1A or 1B lists, including DDVP, the active ingredient in pest strips. A copy of the relevant pages from the Starbucks C.A.F.E. Practices Verifier and Inspector Operations Manual are attached as Exhibit 6.

12. From 2016 through September 2018, the Starbucks Quality Assurance team regularly performed walk-throughs of the Starbucks stores located in Manhattan with the assigned District Managers.

13. Starbucks management, including myself, repeatedly and officially disclaimed the use of No-Pest Strips and warned its store managers not to use them, and also prohibited its vendors from using the underlying pesticide ingredient, DDVP. For example:

- a. On September 29, 2017, I sent an e-mail to the Regional Directors and other management-level employees in the New York region reminding them not to use pest strips and to remove any they find. A copy of the September 29, 2017 e-mail is attached as Exhibit 7.
- b. On September 29, 2017, I sent an e-mail to the Regional Managers and others on the Quality Assurance team reminding them not to use pest strips and to remove any they find, which e-mail was forwarded to other Starbucks District and store managers. A copy of the September 29, 2017 e-mail is attached as Exhibit 8.
- c. On September 29, 2017, I sent an e-mail to the Regional Managers and others on the Quality Assurance team reminding them not to use pest

strips and to remove any they find, including a photo of a pest strip. A copy of the September 29, 2017 e-mail is attached as Exhibit 9.

- d. On October 16, 2017, I sent an e-mail to the Regional Managers and others on the Quality Assurance team reminding them not to use pest strips and to remove any they find, and to pass on this message to all District and store managers, which e-mail was forwarded to other Starbucks employees. A copy of the October 16, 2017 e-mail is attached as Exhibit 10.

14. When Starbucks discovered that its pest control vendor, Ecolab, which was assigned to service various Starbucks throughout Manhattan, had placed pest strips in some stores, Starbucks terminated the Ecolab contract.

Starbucks' Immediate Response to the Discovery of Pest Strips in Certain Stores

15. Upon learning that hot shots were present in certain Manhattan locations, Starbucks took aggressive action to attempt to remove all existing pest strips, and ensure new ones would not be purchased or used in the future. This action includes the following:

- a. On July 27, 2015, in response to an e-mail from D'Auria that he found pest strips in a Starbucks store, Margaret Kis e-mailed D'Auria and Shwiner and said, "in the future, when you see them [referring to pest strips] or anything that shouldn't be there, throw them away". A copy of the July 27, 2015 e-mail is attached as Exhibit 11.
- b. On August 10, 2016, Shwiner e-mailed Margaret Kis, copying D'Auria, and reported that she added to the work orders that the removal of equipment will result in additional charges, which also applies to the removal of no pest strips, bug bombs, or bug spray. A copy of that August 10, 2016 e-mail is attached as Exhibit 12.
- c. On August 10, 2016, Margaret Kis forwarded an e-mail from Shwiner warning of the misuse of pest strips to the Starbucks facilities team, and copied Shwiner on that correspondence. Shwiner acknowledged this communication and forwarded the same message to D'Auria. A copy of that August 10, 2016 e-mail is attached as Exhibit 13.
- d. On August 10, 2016, Margaret Kis reminded two facilities service managers responsible for Manhattan Starbucks locations that store employees are not to use pest strips. A copy of that August 10, 2016 e-mail is attached as Exhibit 14.

- e. On July 5, 2017, the Starbucks facilities team e-mailed the New York regional and district managers to remind them that if “No Pest Strips” are found in stores they must be removed immediately. This e-mail was then forwarded to store managers. A copy of the July 5, 2017 e-mail is attached as Exhibit 15.
- f. On July 5, 2017, Neal Opalka, facilities services manager for Starbucks, confirmed with Shwiner that the district managers had been reminded to remove any pest strips found in Starbucks stores. A copy of the July 5, 2017 e-mail is attached as Exhibit 16.
- g. On September 29, 2017, I e-mailed the Regional Directors responsible for the Manhattan region, reminding that pest strips should not be used in stores and should be removed if located. My e-mail included a picture of a pest strip. A copy of that September 29, 2017 e-mail is attached as Exhibit 17.
- h. On September 29, 2017, Margaret Kis wrote to Jill Shwiner, “IF PAUL FINDS THEM, TOSS THEM OUT,” to which Shwiner replies, “he has been”. A copy of that September 29, 2017 e-mail is attached as Exhibit 18.
- i. On October 16, 2017, I e-mailed the New York regional and district managers and reminded them that hot shots are never to be used and should be removed if found. A copy of the October 16, 2017 e-mail is attached as Exhibit 19. This e-mail was forwarded to other Starbucks managers. A copy of the e-mail forwarding the October 16, 2017 e-mails is attached as Exhibit 20.
- j. On October 16, 2017, I informed Shwiner that I had e-mailed a warning to the Manhattan stores not to use pest strips and to remove any they find. He also told Shwiner that he included this warning in a leadership presentation to Starbucks New York regional directors the week prior. I also informed Shwiner that I planned to remind my team of this in future meetings. A copy of that October 16, 2017 e-mail is attached as Exhibit 21.
- k. On January 17, 2018, Kimberly Healy, Facilities Services Manager at Starbucks, forwarded a message to certain Manhattan Starbucks stores reminding them that hot shots are never to be used. This message was forwarded to other Starbucks personnel. A copy of the January 17, 2018 e-mail is attached as Exhibit 22.
- l. On January 23, 2018, Ron Shuler, Starbucks regional director of NY Metro, confirmed that they were aware of hot shot sightings, and that the

issue was being addressed. A copy of the January 23, 2018 e-mail is attached as Exhibit 23.

- m. On March 12, 2018, Ron Shuler forwarded a message to Starbucks' store and district managers reminding them that hot shots are not to be used in Starbucks stores and should be removed when found. A copy of the March 12, 2018 e-mail is attached as Exhibit 24.
- n. On April 13, 2018, I confirmed that I would remind the leadership team that hot shots had been found and that they were not to be used by Starbucks personnel. A copy of the April 13, 2018 e-mail is attached as Exhibit 25.

16. Starbucks employees were reminded in numerous other e-mails and weekly meetings of Starbucks' policy regarding pest strips/hot shots. A copy of a January 19, 2018 e-mail sent to various Starbucks employees reminding them of same is attached as Exhibit 26; see also Exhibits 4, 9, 10, 16, 19, 22, 23, 24, and 25 attached hereto. These reminders included the instruction that staff were not to purchase pest strips as this product was prohibited by Starbucks' policies. See Exhibits 8, 9, 10, 13, 15, 16, 19, 21, 24, 25, and 26 attached hereto.

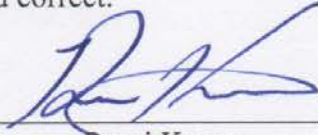
17. Starbucks employees were instructed on numerous occasions that if they found pest strips in any Starbucks location, they were to dispose of them. See Exhibits 8, 13, 15, 16, 17, 25, and 26 attached hereto.

18. The Communications Starbucks sent to its staff reminding of the company's prohibition of the use of pest strips were forwarded to Shwiner and D'Auria. See Exhibits 13 and 15 attached hereto as two such examples.

19. After D'Auria and Shwiner notified Starbucks of their discovery of pest strips, Starbucks relayed their messages to its personnel. See Exhibit 13 attached hereto.

Pursuant to 28 U.S.C. § 1746, I verify under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct.

Executed on January 14, 2021

A handwritten signature in blue ink, appearing to read 'Rami Kranz', is written over a horizontal line.

Rami Kranz